



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TRG
Docket No: 2626-99
26 July 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552
(b) SECNAVINST 1910.4B

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Naval Reserve filed enclosure (1) with this Board requesting a better characterization of service than the undesirable discharge issued on 29 October 1945.

2. The Board, consisting of Mr. Caron, Mr. Swarens and Mr. Zarnesky, reviewed Petitioner's allegations of error and injustice on 18 July 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Naval Reserve on 24 February 1942 at age 21 and reported for active duty on 26 March 1942. The record shows that he left the United States on 3 May 1943 for service in North Africa and did not return to the states until 18 June 1945. During this period he served without any disciplinary infractions and was advanced in rate to coxswain. On 19 September 1945, after a period of leave and several brief assignments, he was transferred for release from active duty. On 21 September 1945, he was apprehended by the shore patrol after he was observed committing a homosexual act. On 18 October 1945

the discharge authority approved the recommendation of his commanding officer that he be discharged for unfitness with an undesirable discharge. He was ere so discharged on 29 October 1945.

d. Reference (b) sets forth the Department of the Navy's current policies, standards and procedures for administratively separating enlisted servicemembers. With regard to homosexuality, reference (b) declares such behavior to be incompatible with naval service. It provides Navy and Marine Corps officials with the authority to involuntarily separated those servicemembers who commit a homosexual act or acts. If separated, the servicemember's discharge and character of service must be based on his or her total performance of duty and conduct. Reference (b) expressly prohibits the issuance of a discharge under conditions other than honorable unless the homosexual act is committed under one of the following circumstances:

- (1) By using force, coercion, or intimidation;
- (2) with a person under 16 years of age;
- (3) with a subordinate in circumstances that violate customary naval superior-subordinate relationships;
- (4) openly in public view;
- (5) for compensation;
- (6) aboard a naval vessel or aircraft; or
- (7) in another location subject to military control under aggravating circumstances noted in the finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

f. Petitioner's military record indicates that he was observed committing a homosexual act from across the street through a widow in his hotel room. In addition, there was another individual in the hotel room. Therefore, the Board believed that the aggravating factor of "openly in public view" exists in this case. However, the Board notes his over three years of excellent wartime service and the fact that he was within days of receiving an honorable discharge. The Board also notes the evidence of record which shows that he was extremely intoxicated at the time.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board now finds the existence of an injustice warranting corrective action. Based upon Petitioner's overall record of service and current Department of the Navy policy as established by reference (b), the Board finds that relief in the form of recharacterization is appropriate notwithstanding the evidence of record which indicates that the homosexual act occurred openly in public view. In reaching its conclusion the Board notes that under the provisions of reference (b) the presence of one or more aggravating circumstances does not mandate the issuance of an other than honorable discharge; reference (b) merely set out the limiting circumstances under which Navy and Marine corps officials may choose to exercise their authority to issue such a discharge. Furthermore, it is the Board's belief that the aggravating matter in this case is adequately offset by the extenuating circumstances surrounding the homosexual act and Petitioner's overall record of service, which include over three years of excellent service during World War II. Since an aggravating factor does exist, the Board concludes that a general discharge is warranted in this case instead of a fully honorably discharge.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that on 29 October 1945 he was issued a general discharge by reason of unfitness vice the undesirable discharge actually issued on that date.
- b. That this Report of Proceedings be filed in Petitioner's naval record.
- c. That the Department of Veterans Affairs be informed upon request that Petitioner's application was received by the Board on 20 April 1999.
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby

announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director